



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Lieberman et al.

Serial No.: 10/663,445

For: Vented Bottle

Filed: September 16, 2003

Examiner: Truong, Kevin Thao

Art Unit: 3734

Confirmation No.: 1590

Customer No.: 27,623

Attorney Docket No.: 460.2299USQ

**Mail Stop AF
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450**

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal. The review is requested for the reasons stated on the attached sheets. There are no other related appeals.

Reasons for Request for Review

Claims 11 and 13 through 33 are pending in the application. Claims 11 and 13 through 33 have been rejected. Claims 11 and 24 are the only independent claims.

The final Office Action asserts that claims 11 and 13 through 33 are unpatentable over U.S. Patent No. 6,161,710 to Dieringer in view of U.S. Patent No. 6,209,736 to Chen. See Office Action (mailed June 15, 2006) at page 2.

Applicants respectfully submit that Dieringer and Chen, either individually or in combination, fail to disclose or suggest the infant feeding assembly disclosed in independent claim 1. To establish a prima facie case of obviousness, there must be some motivation to combine references. The Office Action concedes that Dieringer does not disclose a vent disposed within a bottle. See Office Action (mailed June 15, 2006) at page 2. Instead, Dieringer utilizes a venting mechanism in a nipple. See Amendment (dated February 24, 2006) at pages 7-8. Chen discloses a feeding bottle with a ventilative gasket attached to the bottom of a bottle. The ventilative gasket is placed at the bottom of the bottle to avoid the problems associated with prior art designs. The Office Action indicates that it would have been obvious to one of ordinary skill in the art to provide the Dieringer bottle with a vent to balance the internal and external air pressure. However, balancing the internal and external air pressure is already accomplished by the vented nipple of Dieringer. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP 2143.01. The Office has not indicated why a person having ordinary skill in the art would have found it desirable to combine a vented nipple with a vented bottle. Thus, the Office has failed to show any motivation for combining Dieringer with Chen and the rejection of claim 11 is improper.

Claims 13 through 23 depend from independent claim 11. For at least the reasons given above regarding claim 11, the rejection of claims 13 through 23 is also improper. Additionally, claims 13 through 23 contain additional elements not recited in independent claim 11; the Office has failed to indicate where these additional elements are taught by either Dieringer or Chen.

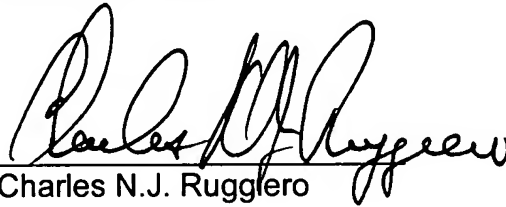
The Office has also failed to establish a prima facie case of obviousness in regard to independent claim 24. To establish a prima facie case, the combined references must disclose or suggest each element of the claim. The final Office Action (mailed June 15, 2006) indicates that claim 24 is rejected as being unpatentable over Dieringer in view of Chen, supposedly because Chen teaches “a bottom cap connected to the second end of [a] bottle.” See Office Action (mailed June 15, 2006) at page 2. However, claim 24 recites a hood, the hood being selectively engageable with both a first end of a bottle and a second end of a bottle. Dieringer discloses a cap with internal threads that matingly engage external threads on a collar to secure the cap in place. Col. 4, lines 51-53. However, the cap disclosed in Dieringer is not engageable with both ends of a bottle. Chen discloses a bottom closure for a bottle, the bottom closure being attached to the bottle by threads. Col. 2 lines 31-55. Again, the bottom closure is configured to fit on only one end of the bottle. Consequently, Dieringer and Chen, either individually or in combination, fail to disclose a hood that is selectively engageable with a first and second end of a bottle. The rejection of claim 24 is therefore improper.

Claims 25 through 33 depend from independent claim 24. For at least the reasons given above regarding claim 24, the rejection of claims 25 through 33 is also improper. Additionally, claims 25 through 33 contain additional elements not recited in independent claim 24; the Office has failed to indicate where these additional elements are taught by either Dieringer or Chen.

Applicants respectfully submit that the rejection of record is clearly erroneous based on the legal and factual deficiencies outlined above. Applicants respectfully request withdrawal of the rejection and that this application be passed to allowance.

Respectfully submitted,

Date: October 16, 2006

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

Charles N.J. Ruggiero

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